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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,816	02/19/2002	Joseph Raymond Diehl	8868	7132

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/078,816	Applicant(s) DIEHL ET AL.	
	Examiner C. Lynne Anderson	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Reopening of Prosecution under 37 CFR 41.39(b)

A request for reopening of prosecution under 37 CFR 41.39(b) was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for reopening of prosecution under 37 CFR 41.39(b), the appeal has been withdrawn pursuant to 37 CFR 41.39(b) and prosecution in this application has been reopened pursuant to 37 CFR 41.39(b). Applicant's submission filed on 22 September 20005 has been entered.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection over Neading in view of Hsu and Flan.

In response to the applicant's argument that the prior art fails to disclose an alphanumeric character, it is noted that Flan teaches the use of letters and numbers as indicators of physical properties of liquid absorbed by an absorbent article.

In response to the applicant's argument that an indicium is defined as "a distinctive mark," it is noted that this is merely one definition for indicium. Indicia is defined in the Merriam-Webster Collegiate Dictionary, 10th Edition, as "indications," and indication is defined as "something that serves to indicate." In the present case, the change in color serves to indicate the specific gravity, and therefore is an indicium.

In response to the applicant's argument that the indicator of Neading is not covered by a semi-permeable membrane, it is noted that the indicator 14A is bordered on one side by the membrane 14B, as shown in figure 3. A clearly shown by the lines

Art Unit: 3761

separating elements 14A and 14B in figure 3, the portion of the fluid transport layer indicated as 14A is a separate element from the portion indicated as 14B. Therefore, the indicator 14A is covered at least in part by membrane 14B, and fulfills the limitations of the claim.

In response to the applicant's argument that the permeable layer of Neading is not a semi-permeable membrane, it is noted that one skilled in the art would recognize that permeability as applied to the art of absorbent articles refers to permeability to liquid exudants. Therefore, the limitation "semi-permeable membrane" should be read in light of its plain meaning, and the permeable layer of Neading fulfills the limitations of the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-12, and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neading et al. (6,515,194) in view of Hsu (5,922,283) and further in view of Flam (5,181,905).

With respect to claims 1, 10, and 17, Neading discloses a wearable article, as shown in figure 2, comprising a topsheet 18 and a dehydration indicator 14A, 16. The dehydration indicator 14A, 16 exhibits a visible response elicited by the specific gravity, as disclosed in column 4, lines 1-8. The wearable article is an absorbent article, as

shown in figure 2, comprising an outer cover 22, a fluid permeable topsheet 18, and an absorbent structure 20.

Neading remains silent as to the method of measuring specific gravity, and does not explicitly disclose the measuring of the urine ionic strength in order to determine the specific gravity of the urine. Hsu teaches the use of test strips to determine the specific gravity of urine by measuring the urine ionic strength. The test strips comprise an absorbent material impregnated with a reagent that exhibits a color change upon contact with urine to indicate the ionic strength and subsequently the specific gravity of the urine, as disclosed in column 8, lines 3-12. Neading discloses the need for a material that undergoes a color change elicited by specific gravity, as described in column 4, lines 1-4, by contacting the material with absorbed urine, thus providing a motivation to measure any parameter that would allow the determination of specific gravity from a color change. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the test strip material of Hsu as the strip of material disclosed by Neading, to provide an indicator designed for absorption of urine that undergoes a color change elicited by specific gravity.

Neading, as modified by Hsu, fails to disclose the dehydration indicator comprising an alphanumeric character indicative of a level of dehydration. Neading and Hsu disclose a color change indicative of a level of dehydration. Flan teaches the use of letters and numbers to indicate a physical property of a liquid absorbed by an absorbent article, as shown in figure 3. The use of letters and numbers as indicia allow the user to more easily recognize a change in the property and administer appropriate

Art Unit: 3761

treatment, as disclosed in column 4, lines 56-68. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the indicator of Neading, as modified by Hsu, with alphanumeric characters, as taught by Flam, to allow the user to more easily recognize a change in the property and administer appropriate treatment.

With respect to claim 2, the dehydration indicator 14A, 16 provides a qualitative indication of the specific gravity, which can be used to determine dehydration.

With respect to claims 4, 11, 12, and 18, the dehydration indicator 14A, 16 is affixed to, or disposed on, the topsheet 18, as shown in figure 3, and is fully capable of being detached from the topsheet 18.

With respect to claims 5, 6, 19, and 20, the dehydration indicator 14A, 16 comprises an indicium, the indicium being a color change, as disclosed in column 4, lines 1-4.

With respect to claims 7 and 15, the dehydration indicator is disposed on a carrier element, as disclosed in column 3, lines 57-58.

With respect to claims 8 and 14, the dehydration indicator 14A, 16 is covered by a semipermeable membrane 14B, as shown in figure 3.

With respect to claims 9 and 16, the dehydration indicator 14A, 16 is in fluid communication with a fluid transport element 14B, as shown in figure 3.

Claims 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neading et al. (6,515,194) in view of Hsu (5,922,283) and Flam (5,181,905), as applied to claims 1 and 10 above, and further in view of Lee (5,947,943).

Neading, in combination with Hsu and Flam, discloses all aspects of the claimed invention but remains silent with respect to the outer cover 22. Neading discloses in column 4, lines 49 and 67, that the indicator comprised in the article is exposed.

Lee discloses an absorbent article having an indicator located therein, as described in column 3, lines 12-15. The outer cover 16 of the article is translucent so the indicator may be easily viewed without removing the article, as disclosed in column 3, lines 46-55. The outer cover 16 provides a barrier to moisture, as disclosed in column 3, line 6, which prevents liquids from leaking from the article and protects the indicator from exterior liquids.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to make the outer cover of Neading as modified by the teaching of Hsu, translucent, as taught by Lee, so the indicator is protected by the cover but still easily viewed without removal of the article.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 3761

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CMA
cla
January 20, 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

